

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

1998 Biennial Regulatory Review --
Streamlining of Radio Technical Rules in
Parts 73 and 74 of the Commission's Rules

MM Docket No. 98-93

To: The Commission

COMMENTS OF CUMULUS MEDIA INC.

Cumulus Media Inc. ("Cumulus"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby respectfully submits these Comments in response to the Commission's *Notice of Proposed Rule Making and Order* in this proceeding ("NPRM"), FCC 98-117, adopted on June 11, 1998 and released on June 15, 1998, 63 Fed. Reg. 33875 (published on June 22, 1998). ^{1/}

^{1/} These Comments are timely filed in accordance with the revised schedule for submitting comments and reply comments in this proceeding that was adopted in the *Order*, DA 98-1468, adopted and released on July 23, 1998, 63 Fed. Reg. 42802 (published on August 11, 1998).

Introduction

1. Cumulus, through subsidiaries, currently owns, operates (either as the licensee thereof, or pursuant to so-called “time brokerage” agreements with the licensees thereof), or has pending before the Commission applications for the Commission’s consents to acquire the licenses of, a total of 200 commercial AM and FM radio broadcasting stations clustered in various mid-sized and smaller markets in certain Northeastern, Mid-Atlantic, Southeastern, and Midwestern states. As the parent company of the licensees of those stations, Cumulus has a keen interest in the proposals in the *NPRM* to modify some of the Commission’s engineering rules. Of principal interest to Cumulus are the proposals to permit FM radio broadcasting stations to negotiate among themselves facilities modifications that may result in a limited amount of interference received by one or more such stations; to permit the use of a new “point-to-point” (“PTP”) methodology for predicting the locations of the field-intensity signal contours of FM stations for purposes of demonstrating compliance with certain of the Commission’s regulations; and to adopt a new class of FM station, known as the C-0 (“C-Zero”) class. Cumulus’s Comments on those three discrete proposals follow.

Negotiated Interference

2. Cumulus supports the Commission's proposal to empower FM stations to negotiate among themselves agreements for facilities modifications that might result in one or more such stations receiving a limited amount of interference. The FM radio broadcasting service is a mature service, with 7,639 primary FM stations nationwide (including both commercial and noncommercial, educational stations).^{2/} FM station licensees have had decades in which to decide which audiences within their stations' existing service areas are the most important for the success of their stations. As a matter of economic necessity, a licensee would never agree to sacrifice coverage of core audience areas in exchange for a one-time-only payment or other limited consideration. Consequently, the risk of measurable harm to the public's ability to receive a multiplicity of stations is minimal.

3. The Commission has built into its proposal for negotiated interference certain safeguards and limitations that ensure that the cardinal values of the FM broadcast service will not be lost as a result of the adoption of the proposal. Thus, for example, total interference received by any station from all interfering stations combined must not involve more than five percent of the affected station's service area and

^{2/} See the Commission's *News* release entitled *Broadcast Station Totals as of September 30, 1998*, dated October 19, 1998.

population; total service area and population gains registered by all affected stations must equal at least five times the total interference areas and populations resulting from the negotiated interference arrangements; predicted interference may not occur within an affected station's community of license; and an applicant proposing to cause or receive interference in a previously interference-free area must demonstrate that at least five remaining aural reception services are available throughout that area. *NPRM* at Paragraph 20. With those safeguards and limitations, the Commission has taken pains to ensure that the core principles of the FM broadcast service will continue to be preserved in an era of greater flexibility for licensees to locate favorable antenna sites for their stations.

4. Such flexibility is increasingly needed by FM radio broadcasting stations. The imminent arrival of digital television ("DTV"), and the demand for existing antenna tower space to accommodate a second transmitting antenna (for DTV service) for each existing analog television station during the so-called "transition" period in the conversion of the television broadcasting service from analog to digital, have placed great demands upon available tower resources. FM stations are finding themselves pressured to vacate their antenna placements in favor of the DTV antennas of the television stations that own the towers. With aeronautical obstructions standards tightly enforced by the Federal Aviation Administration (the "FAA"), and with local governments exercising ever-more-intrusive regulation over the siting, height, and construction of

communications antenna towers, FM stations need as much latitude as possible to find new antenna tower locations. Relaxation of the Commission's existing FM station separations requirements to permit modest and controlled amounts of voluntarily-incurred interference would go a long way in providing much-needed relief for FM station owners. Cumulus congratulates the Commission for setting forth a timely and welcome proposal in the *NPRM*, and strongly endorses its adoption.

PTP Contour Location Prediction Methodology

5. Cumulus also supports the Commission's adoption of the proposed PTP methodology to predict the locations of FM stations' field-intensity signal contours. The PTP method is more refined, and therefore likely to produce more accurate predictions, than reliance upon the method set forth in Section 73.313 of the Commission's Rules. Section 73.313 was adopted prior to the time when stations and their engineering consultants have rapid and relatively cost-effective access to terrain databases that permit remarkably precise field-strength calculations in individualized circumstances. All parties, including the Commission, would benefit from taking advantage of a more sophisticated and accurate contour prediction methodology.

6. On the other hand, Cumulus is baffled and disappointed that the Commission proposes to use PTP methodology for some -- but not all -- purposes.

NPRM at Paragraphs 31-35. The Commission proposes to allow PTP calculations to form the basis for demonstrating compliance with the contour overlap/interference protection regulations (Sections 73.213, 73.215, 73.509, 73.525, and 74.1204 of the Rules), the so-called “city-grade” signal coverage requirement (Section 73.315 of the Rules), and the main studio location rule (Section 73.1125 of the Rules). *Id.* at Paragraphs 31-32. Curiously, however, the *NPRM* does not propose to permit PTP methodology to demonstrate compliance with the multiple ownership rule (Section 73.3555 of the Rules). *Id.* at Paragraph 34.

7. Cumulus finds puzzling the Commission’s inconsistent approach to the proposed use of the PTP methodology. If, as the *NPRM* indicates -- and as Cumulus understands and agrees -- the PTP method renders a contour location prediction that is more accurate than the prediction reached by the use of Section 73.313, there is no reason to restrict the availability of the PTP method in matters where the location of a signal contour is the factual issue that determines compliance, *vel non*, with the Commission’s Rules. Indeed, the *NPRM*’s proposal runs entirely counter to the primary thrust of this proceeding, which is to streamline the Commission’s rules and procedures. By permitting the use of PTP calculations for some but not all purposes, the Commission would introduce an unnecessary complication and a dichotomy producing either a more accurate or a less accurate contour location prediction, depending upon which Commission rule is being invoked. Given the widespread availability of databases and

their easy and cost-effective accessibility, the Commission should ensure that the tools of the late 1990's are available to licensees for as many purposes as possible, including demonstration of compliance with Section 73.3555 of the Rules.^{3/} Cumulus urges the Commission to permit the use of the PTP methodology for showings of compliance with the Commission's multiple ownership rule.

Class C-Zero FM Stations

8. In only one respect does Cumulus dissent entirely from the proposals in the *NPRM*, and that is with respect to the proposed creation of an additional class of FM station, the Class C-Zero station. *NPRM* at Paragraphs 40-44. Cumulus

^{3/} The *NPRM* expresses concern that “[s]elective application of the PTP method to some, but not all stations in a relevant market would invite disputes where contradictory results could occur.” *NPRM* at Para. 34. Cumulus believes that the number of occasions in which the use of the PTP method would engender controversy between parties on an issue of compliance with Section 73.3555 is likely to be far smaller than seemingly feared by the *NPRM*, and almost certainly smaller than the number of occasions in which the use of the PTP method to determine compliance with the contour overlap/interference protection rules, the city-grade coverage rule, and the main studio location rule would similarly engender controversy. In those cases where a party disputes an applicant's showing of compliance with Section 73.3555, based upon PTP calculations, the disputant may submit its own PTP calculations with respect to the contours of the station or stations in dispute. In such cases, the Commission's engineering staff would be able to perform its own calculations to resolve the dispute without undue burden.

opposes the adoption of that proposal on the grounds that it will reprise the worst aspects of the BC Docket No. 80-90 proceeding with no known benefit to the public interest.

9. In BC Docket No. 80-90, the Commission established certain minimum facilities values for Class C FM stations, and consigned all Class C stations whose facilities did not conform to those minima within three years to downward reclassification (to Class C-1 or C-2 status). The Commission's action touched off what might be characterized as a frenzied scramble on the part of Class C FM stations to locate antenna towers with available space at suitable elevations, or else locations for the erection of new antenna towers having minimum altitudes, in order to protect those stations' Class C designations. Retaining a station's Class C status carried the benefit of forestalling downward reclassification and the risk of incurring "move-ins" by other FM stations on the same or adjacent channels, taking advantage of the reduced separation requirements applicable to Class C-1 and C-2 stations. Many Class C stations were successful; tall antenna towers proliferated to accommodate the Class C stations' migration to the minimum 300 meters of antenna height above average terrain ("HAAT"), not always to the liking of the FAA, nearby residents and building occupants, and local municipalities. Some Class C stations were forcibly reclassified down to Class C-1 or C-2 status. Those reclassifications made it possible for the Commission to allot new FM station channels and to authorize new or improved FM station facilities that had previously been precluded by the spacing requirements attendant upon the reclassified

stations' former Class C designations. Cumulus is not aware that the Commission has ever attempted to quantify the exact number of new channel allotments and new or improved FM stations that benefitted from the BC Docket No. 80-90 proceeding.

10. As indicated in Paragraph 4 of these Comments, *supra*, FM stations are already under intense pressure -- without regard to the proposals in the *NPRM* -- to locate new antenna placements. The arrival of DTV is literally pushing FM antennas off of their current towers. The displaced FM stations are finding that the overlay of FAA aeronautical obstructions rules, local county and municipal zoning and land-use restrictions, and organized opposition from nearby residential associations and neighborhood groups frequently precludes opportunities to relocate to antenna towers, or to erect new antenna towers, that would permit such stations to maintain a minimum HAAT of 450 meters. Notwithstanding those obstacles, if the proposal in the *NPRM* were to be adopted, stations would surely endeavor to make more intensive use of tall antenna structures, as they did in the wake of BC Docket No. 80-90, in order to avoid downward reclassification and its consequences. Some of those stations might succeed in finding opportunities to erect new tall antenna support structures, with potentially adverse impacts upon navigable airspace and the environment. Other Class C stations would fail and would suffer downward reclassification. This process having already been undertaken within the last 15 years in BC Docket No. 80-90, with the result that the FM band is now more intensively utilized than ever before, it is unlikely that there would be

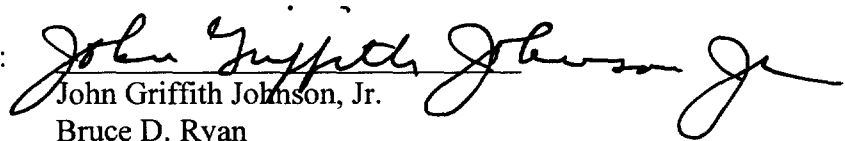
sufficient opportunities created by such downward reclassifications for new channel allotments, new stations, or other stations' facilities improvements; the juice has already been largely if not entirely squeezed from the lemon. At a minimum, before setting off another time-consuming and costly scramble for tall antenna tower space availability, the Commission should first make certain to quantify the benefits of such a process and to make a determination that they are sufficient in number and scope to justify the disruption to Class C FM stations and the service that they provide to their listeners.

WHEREFORE, Cumulus urges the Commission to adopt rule amendments in accordance with these Comments.

Respectfully submitted,

CUMULUS MEDIA INC.

By:


John Griffith Johnson, Jr.
Bruce D. Ryan
David D. Burns

PAUL, HASTINGS, JANOFSKY & WALKER, LLP
1299 Pennsylvania Avenue, N.W., Tenth Floor
Washington, DC 20004-2400
Telephone: (202) 508-9578
Facsimile: (202) 508-9700

Its Attorneys

October 20, 1998

CERTIFICATE OF SERVICE

I, Alicia M. Altamirano, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, LLP, do hereby certify that I have on this twentieth day of October, 1998 mailed a copy of the foregoing **COMMENTS OF CUMULUS MEDIA INC.** to the following by first-class United States mail, postage prepaid:

Dennis F. Begley, Esq.
Reddy, Begley & McCormick
2175 K Street, N.W.
Suite 350
Washington, D.C. 20037-1803


Alicia M. Altamirano